

M e m o r a n d u m

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To: Mr. Glenn A. Bystrom
Principal Tax Auditor

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From: Gordon P. Adelman
Senior Tax Counsel

Subject: Senate Bill 1006

Several scenarios have been discussed concerning exemptions from sales tax for low-emission vehicles and motor vehicle control devices which convert conventional vehicles into low-emission vehicles.

It is clear from the language of Section 6356.5(a), Rev. and Tax. Code added by SB 1006, that an exemption is provided for the incremental costs of the sale of new low-emission motor vehicles. It is also clear from the language of Section 6356.5(b), Rev. and Tax. Code added by SB 1006, that an exemption is provided for the sale of retrofit devices that convert conventional vehicles with low-emission vehicles. Such devices would be exempt if sold to a consumer who converts the vehicle, or sold and installed on the consumer's vehicle by the retailer making the sale.

Finally there is no question that a subsequent sale of a used low-emission motor vehicle which originally qualified for the incremental exemption as a new low-emission motor vehicle would not be exempt.

The remaining issue is whether a used vehicle purchased by the retrofit device company, retrofitted and then sold would qualify for the exemption. My opinion is that there would not be an exemption available for the reasons stated below.

Senate Bill 1006 provided only two exemptions. One exemption is for the incremental costs of the sale of new low-emission motor vehicles. The second is for the retrofit devices.

The retailer, by purchasing a used vehicle, retrofitting it used then selling the vehicle is not selling the retrofit device. The sale is a sale of a low-emission vehicle. See Flying Tiger Line Inc. v. SBE 157 Cal.App.2d 85 where the court held that one ailerons were installed into an aircraft they became an integral part of the airplane and not a separate identifiable device. While not exactly on point the case illustrates that once the retrofit devices were installed, the purchaser is buying a used low-emission car and not a car and a separate exempt device.

It is my opinion, therefore, that we should not exempt any portion of the selling price of a used motor vehicle purchased and converted by the seller to a low-emission vehicle and then sold at retail.